

RicohPOR (Perkins Coie)

From: Feldman, Stephen (Perkins Coie)
Sent: Friday, February 14, 2014 7:15 PM
To: Will@farlawfirm.com
Subject: River City / WasteXpress Escrow Agreement
Attachments: 29411637_1.doc

Will,

Attached is a draft of the escrow agreement. Please let me know if you have any questions or comments.

Also, as you will see, I need for you to fill in (or change as the case may be) the notice information for River City.

Thanks, and have a good weekend.

Stephen

Stephen M. Feldman | Perkins Coie LLP
1120 N.W. Couch Street
Tenth Floor
Portland, OR 97209-4128
PHONE: 503.727.2058
FAX: 503.346.2058
E-MAIL: sfeldman@perkinscoie.com



Please consider the environment before printing this email. Thank you.

ESCROW AGREEMENT

THIS ESCROW AGREEMENT (this "Agreement") is entered into as of February ____, 2014, by and among **DAVID L. ELLIS, PAMELA L. ELLIS, AND FAROUK H. AL-HADI**, the owners as tenants in common of the property located at 140 Queen Avenue SW, Albany, Oregon (collectively, "Seller"), **RIVER CITY ENVIRONMENTAL, INC.** ("River City"), **INTERNATIONAL RESOURCE MANAGEMENT, INC. d/b/a WASTEXPRESS** ("WasteXpress"), and **CHICAGO TITLE COMPANY** ("Escrow Holder").

RECITALS

1. Seller intends to sell the property located at 140 Queen Avenue SW, Albany, Oregon (the "Property") to Pacific Cast Technologies, Inc. ("Buyer") pursuant to that certain Purchase and Sale Agreement dated October 17, 2013, as amended by the First Amendment to Purchase and Sale Agreement dated January 3, 2014, and as further amended by the Second Amendment to Purchase and Sale Agreement dated January 14, 2014 (the "Purchase Agreement"). As set forth in the Purchase Agreement, the sale of the Property from Seller to Buyer shall be for a specified sum (the "Purchase Price").
2. The United States Environmental Protection Agency required Seller to perform certain construction-related, environmental remediation activities on the Property, and Seller hired River City to perform those activities. River City, in turn, subcontracted with WasteXpress to perform certain of the remediation activities that Seller hired River City to perform.
3. In addition to the environmental remediation activities discussed above, River City has performed and has contracted to perform certain other services for Seller.
4. As a result of the aforementioned work performed by River City and WasteXpress, each of these entities has recorded one or more liens against the Property.
5. Seller, River City, and WasteXpress now desire to resolve the amounts owed by and among these parties and to do so through proceeds from the sale of the Property from Seller to Buyer. It is the further desire of Seller, River City, and WasteXpress to release all liens that River City and WasteXpress have recorded against the Property so that the sale of the Property from Seller to Buyer may close (the "Closing").
6. Seller, River City, and WasteXpress desire that Escrow Holder receive, hold and disburse funds in accordance with the terms, conditions and provisions of this Agreement, and Escrow Holder is willing to do so.

AGREEMENT

1. Appointment of Escrow Holder. Escrow Holder is hereby appointed by Seller, River City, and Wastexpress as the escrow agent to receive, hold and disburse funds in accordance with the terms and conditions hereof.

2. Acceptance by Escrow Holder. Subject to the terms and conditions contained herein, Escrow Holder agrees to hold and disburse funds pursuant to this Agreement. Any reasonable charges and costs incurred by Escrow Holder for establishing and maintaining the escrow(s) established hereby and/or for wiring any funds pursuant to this Agreement shall be paid by Seller.

3. Escrow Terms, Obligations, and Instructions.

(a) By no later than 10:00 a.m. on Tuesday, February 18, 2014, River City shall deliver to Escrow Holder fully-executed lien releases for all liens that it has recorded against the Property. WasteXpress likewise shall deliver to Escrow Holder fully-executed lien releases for all liens that it has recorded against the Property by no later than 10:00 a.m. on Tuesday, February 18, 2014.

(b) At Closing, Escrow Holder shall set aside \$225,000 from the Purchase Price and Escrow Holder shall disburse these funds that same day as follows: (i) \$85,868.51 (plus \$38.23 per day for each day after February 18, 2014) shall be disbursed to WasteXpress via wire transfer in accordance with the wiring instructions attached hereto as Schedule 1; and (ii) \$139,131.49 (less \$38.23 per day for each day after February 18, 2014) shall be disbursed to River City in the form of a check issued by Escrow Holder.

(c) Upon making the disbursements identified above in Section 3(b), Escrow Agent shall be authorized to record the lien releases identified above in Section 3(a)

(d) Separate and apart from the \$225,000 set aside referenced above in Section 3(b), Escrow Holder shall, at Closing, hold back \$150,000 from the proceeds of the sale of the Property to Buyer and deposit that sum into an escrow account that Escrow Holder shall set up (the "First Escrow Account"). That \$150,000 shall remain in the First Escrow Account until Escrow Holder receives joint, written instructions from Seller and River City regarding when and to whom the \$150,000 (or portions thereof) should be disbursed. Seller and River City agree to provide Escrow Holder with such joint, written instructions by no later than August 18, 2014.

(e) Separate and apart from the \$225,000 set aside referenced above in Section 3(b) and the \$150,000 hold back referenced above in Section 3(d), Escrow Holder shall, at Closing, hold back \$50,000 from the proceeds of the sale of the Property to Buyer and deposit that sum into another escrow account that Escrow Holder shall set up (the "Second Escrow Account"). That \$50,000 shall remain in the Second Escrow Account until Escrow Holder receives joint, written instructions from Seller and River City regarding when and to whom the \$50,000 (or portions thereof) should be disbursed. Seller and River City agree to provide Escrow Holder with such joint, written instructions by no later than August 18, 2014.

4. Rights, Duties, Liabilities, Privileges and Immunities of Escrow Holder. Seller, River City, WasteXpress, and Escrow Holder agree that the following provisions shall control with respect to the rights, duties, liabilities, privileges and immunities of Escrow Holder.

(a) In the event of any disagreement between or among any of the parties to this Agreement, or between them or any of them or any other person or entity resulting in adverse claims or demands being made in connection with the subject matter of the escrow(s) established hereunder, or in the event that Escrow Holder, in good faith, is in doubt as to what action it should take hereunder, Escrow Holder may, at its option, refuse to comply with any claims or demands on it, or refuse to take any other action hereunder, so long as such disagreement continues or such doubt exists, and, in any such event, Escrow Holder shall not be or become liable in any way or to any person or entity for its failure or refusal to act, and Escrow Holder shall be entitled to continue to refrain from action until all differences shall have been adjusted and all doubt resolved by agreement among all of the interested persons or entities, and Escrow Holder shall have been notified thereof in writing signed by all such persons or entities.

(b) Escrow Holder shall not offset, withhold from disbursement, or otherwise seek to use any of the funds in the First Escrow Account or the Second Escrow Account for its own benefit, whether or not a debt is owed to Escrow Holder by any party hereto.

5. Notices. All notices and other communications hereunder shall be provided by either personal delivery or email transmission at the addresses set forth below:

To Seller: David L. Ellis
Capacity Commercial Group, LLC
805 SW Broadway, Suite 700
Portland, OR 97205
Email: DELLIS@capacitycommercial.com

With Copy to: Stephen M. Feldman
Perkins Coie LLP
1120 N.W. Couch St., Tenth Floor
Portland, OR 97209
Email: sfeldman@perkinscoie.com

To River City: River City Environmental, Inc.
Attn: Jonathan Sheckard
PO Box 30087
Portland, OR 97294
Email: _____

With Copy to: Will Patterson
Folawn Alterman & Richardson LLP
Fox Tower
805 SW Broadway, Suite 2750
Portland, OR 97205
Email: Will@farlawfirm.com

To WasteXpress: International Resource Management, Inc.
Attn: Arthur Marks
PO Box 31100
Portland, OR 97231
Email: arthur@wastex.com

To Escrow Holder: Chicago Title Company
1211 SW Fifth Avenue, Suite 2130
Portland, OR 97204
Attn: Kelly M. Norton
Email: Kelly.Norton@ctt.com

6. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns.

7. Counterparts. This Agreement may be executed in a number of identical counterparts, each of which for all purposes is to be deemed an original, and all of which constitute, collectively, one agreement. An electronic copy of a party's signature is valid and binding to the same extent as an original signature.

8. Governing Law. This Agreement shall be governed by, interpreted under, and construed and enforced in accordance with the laws of the State of Oregon.

[Signatures begin on the following page.]

IN WITNESS WHEREOF, the parties have executed and delivered this Agreement as of the date first above written.

SELLER:

David L. Ellis

Pamela L. Ellis

Farouk H. Al-Hadi

WASTEXPRESS:

International Resource Management, Inc.

By: _____

Name: _____

Its: _____

RIVER CITY:

River City Environmental, Inc.

By: _____

Name: _____

Its: _____

ESCROW HOLDER:

Chicago Title Company

By: _____

Name: _____

Its: _____

SCHEDULE 1
WasteXpress's Wiring Instructions

Wire transfers to WasteXpress shall be made through the [insert bank] using the following information:

Routing No. 123000220

Acct No. 153600553066

Additionally, Escrow Holder shall include the following reference on the wire transmission:

- For River City (Queen Avenue property Albany, Oregon)